

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

ELIZABETH JACKSON,

Plaintiff

VS.

MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,

Defendant

NO. 1:06-CV-45 (WLS)

PROCEEDING UNDER 42 U.S.C. § 405(g)
BEFORE THE U.S. MAGISTRATE JUDGE

ORDER ON MOTION FOR ATTORNEYS FEES

Pending in this appeal under 42 U.S.C § 405(g) is a motion for attorneys fees filed by plaintiff at Tab #28.

The Court entered a Judgment on March 3, 2007. See Tab #20. Plaintiff ELIZABETH JACKSON petitioned for and received attorneys fees in the amount of \$4,163.45 under the Equal Access to Justice (EAJA), 42 U.S.C. § 2412(d). Plaintiff now requests attorney fees under 42 U.S.C. § 1983(d)(2) in the amount of \$9,246.59. Plaintiff bases this amount on an August 18, 2008, letter from the Commissioner to Plaintiff, notifying her that she had been awarded SSI payments dating back to January 1, 2003. However, the exact amount of the award or the amount of attorneys fees withheld is not stated in the letter. The Commissioner requests that this matter be held in abeyance pending a determination by the Agency of the exact amount withheld as attorney fees.

Additionally, the Commissioner argues that if Plaintiff is awarded § 1983(d)(2) fees, Plaintiff's counsel should refund to Plaintiff the EAJA fees previously collected in the amount of \$4,163.45. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (Congress harmonized fees payable by the government under EAJA with fees payable under § 406(b); fee awards may be made under both prescriptions, but the claimant's attorney must refund to the claimant the amount of the smaller fee.").

Therefore, it is the ORDER of the undersigned that Plaintiff's motion for the award of attorneys fees be **DENIED** at this time, but that Plaintiff may submit an additional motion for attorney fees once she can provide documentation of the official amount awarded or the amount withheld by the Commissioner for attorneys fees.

SO ORDERED AND DIRECTED, this 20th day of NOVEMBER, 2009.



A handwritten signature in black ink, reading "Claude W. Hicks, Jr." The signature is written in a cursive, flowing style.

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE